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Name of appellants, assignee or
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David W. Okey

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Our Case No. 5658-746

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Poole et al.

Serial No. 09/911,242

Filing Date: July 23, 2001

For: ONE HAND PIPE WRENCH

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)
)
) Examiner: Debra S. Meislin
)
) Group Art Unit No. 3723
)
)

SUBMISSION UNDER 37 C.F.R. § 1.116

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

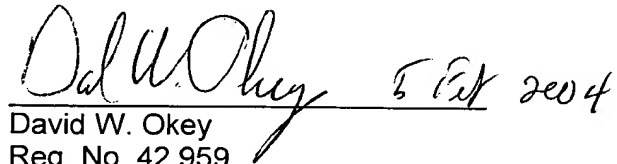
1. In the time since the August, 2003, filing of the Appeal Brief, the assignee of the appealed application has offered for commercial and industrial sale a product that is encompassed by one or more claims of the appealed application. Appellants wish to introduce this data as further evidence of the non-obviousness of the claimed invention.

37 C.F.R. § 1.116 allows the submission of items after final action or appeal upon showing a good and sufficient reason why the items submitted are necessary and were not earlier presented. These secondary considerations of non-obviousness, sales data for October-December 2003, for a one-handed pipe wrench encompassed by one or more claims of the appealed application, are only now available. Appellants wish for these data to be on the record in this appeal, since issues raised for the first time at oral argument may not be entitled to consideration. M.P.E.P. 1206 at 1200-11.

2. Appellants do not have even three months full data of sales at this time, but approximately 100,000 units (wrenches) were sold in October-December 2003. Sales estimates are that the product will sell in the range of 30,000 to 35,000 units per month in 2004. This contemplates retail sales in chain stores such as Lowe's and Sears, as well as industrial sales through wholesalers and plumbing supply outlets, and automotive wholesalers as well. The attached declaration under 37 C.F.R. § 1.132, previously mailed on January 7, 2004, presents data for the record.

3. This evidence of secondary considerations of non-obviousness is only now becoming available. Appellants raise the argument here, and reserve the right to present additional evidence of sales data as they become available. With the product now being sold, Appellants are receiving strong indications of market acceptance in the form of actual sales. Appellants wish to make these data of record for the Board, as they become available.

Respectfully submitted,


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